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UNCLAS SECTION 01 OF 02 GENEVA 002396

SIPDIS

SECDEF PASS TO DOD/OGC, DOD/OSD; JOINT STAFF -  
JCS/LEGAL;OSD FOR USDP-DETAINEE AFFAIRS

E.O. 12958: N/A

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SUBJECT: DOD GENERAL COUNSEL HAYNES, MEETING WITH HIGH  
COMMISSIONER FOR HUMAN RIGHTS ARBOUR

Participants

1. (U) U.S.: Ambassador Kevin Moley, DOD General Counsel William J. Haynes, DOD DAS Matthew Waxman, USN Capt. Michael Boock, EUCOM Col. William Lietzau and Lt. Col. Sarajane Stenton, U.S. Mission Legal Adviser Jeffrey Kovar, and Political Counselor Velia De Pirro.

OHCHR: High Commissioner Louise Arbour, and OHCHR Human Rights Officers Jonathan Prentice, Karim Gehzraoui and Shahrzad Tadjbakhsh.

Human Rights Law and Humanitarian Law

2. (SBU) In a September 22, 2005 meeting with High Commissioner for Human Rights Louise Arbour, DOD General Counsel William J. Haynes welcomed the opportunity to meet with her and offered to begin a dialogue on issues of mutual interest. Arbour said she welcomed the opportunity to speak with GC Haynes. Noting that her first experience in international humanitarian law had been with the International Criminal Tribunal for Yugoslavia (ICTY), she lauded the precedent set by ICTY in creating a new body of law by establishing personal criminal accountability for rulers and others who abused human rights. Arbour urged the United States to exercise leadership in support of what she deemed to be progressive international legal developments. She stressed that the United States must be willing to subject itself to the international legal rules to which it wants to hold others.

3. (SBU) She pointed to the United States and Canada as two democracies with legislation providing protections well beyond the minimum standards of most international law. She asserted that this made it easier to accept an international regime of rules. For example, both countries could easily embrace international rules on admissibility of evidence in criminal cases. Arbour described her work on a fully functioning international regime of human rights rules, implementation, and enforcement, in addition to robust domestic implementation through universal jurisdiction. She saw this as the natural evolution of law that is moving and bringing exciting changes, rather than remaining settled.

4. (SBU) GC Haynes noted that there was a lot of room for discussion as the law continues to develop; it is important to take account of the key role of the customs and practices of nations in the discussion. He warned that new rules may have unintended consequences, and that customs are not always accepted by every state. The U.S. is reluctant to support any unelected body making new international rules.

Access for Special Rapporteurs to Guantanamo

5. (SBU) As expected, Arbour was forceful in making her case for admitting the Special Rapporteurs to Guantanamo. She said that the United States simply had to agree to a reasonable request to stop the increasing pressure on this issue and to assert its leadership role in defending human rights. She added that allowing at least some of the rapporteurs to visit would benefit the United States, image in the world as well as make things easier for friends and allies of the United States. GC Haynes said he heard the message loud and clear. He noted that the issue was under review, and expressed appreciation for Arbour's support for U.S. leadership on human rights.

Assurances Against Torture for Returned Detainees

6. (SBU) Arbour had read in the press that the United States was about to return detainees to Afghanistan. She expressed concern they not be returned if there was any question of torture, noting that Sweden had been found by the Torture Committee to have violated the Convention Against Torture in this regard. DAS Waxman responded by describing current

discussions. There was agreement that Arbour's efforts to assist the GOA with rule of law issues could complement DOD efforts to create the infrastructure to receive the returnees. Arbour added that her office was prepared to provide assistance in assessing the credibility of the assurances provided by host governments. She questioned the acceptance of assurances from nations that are known to be human rights violators. GC Haynes stressed that U.S. law in this regard was clear; moreover, the United States did not want to keep detained persons longer than necessary.

#### Detention Review -----

17. (SBU) Arbour said she had heard it said that the USG doctrine was an absolute separation of international human rights and humanitarian law. In her view, the two bodies of law operate together, as in Darfur. She noted she was pleased that the U.S. Supreme Court had filled the legal "black hole" regarding detainees. GC Haynes responded that DOD was eager to engage on these issues; that long before the Supreme Court ruled on the right of detainees to bring habeas corpus actions, there were several layers of administrative review for Guantanamo detainees. He outlined various aspects of the procedure governing Commissions.

#### Visit to United States -----

18. (SBU) At the beginning of the meeting, Arbour noted her interest in visiting Washington to meet with Secretary of Defense Rumsfeld, which adds to her outstanding request to meet with Secretary Rice. (Comment: U.S. Mission Geneva is working on dates for a possible visit later this fall. End comment)

19. GC Haynes has cleared on this message.

Moley